

REMARKS

Claims 1-4, 6-8, 10-12, 14-16, 24-27, 30-32, 34, 35 and 37-43 are pending.

Claims 1-4, 6-8, 10-12, 14-16, 24-27, 30-32, 34, 35 and 37-43 stand been rejected.

Claims 1, 7, 10, 14, 15, 24, 27, 30, 31, 34, 35, and 39-43 have been amended.

Support for these amendments can be found throughout the originally filed application.

For example support can be found at least in FIG. 4.

Claims 44-48 have been added. Support for these claims can be found throughout the originally filed application. For example support can be found at least in lines 10-30 of page 16 of the specification.

Claim Objections

Claim 34 has been objected to as purportedly being of improper dependent form.

See Office Action, p. 2. Applicants have amended claim 34 to address this objection.

Therefore, Applicants respectfully request the reconsideration and withdrawal of this objection.

Rejection under 35 U.S.C. § 112

The Office Action rejects claim 7 since it is purportedly the case that there is insufficient antecedent basis for “the first point in time” recited in claim 7. See Office Action, p. 2. Applicants respectfully request the withdrawal of the rejection against claim 7 for at least the reason that claim 7 depends upon claim 1, which recites “generating a

first data quantity value representing a quantity of data stored in the memory at a first point in time” (emphasis added).

The Office Action rejects claim 39 since it is purportedly the case that there is insufficient antecedent basis for “the rate control signal” recited in claim 39. *See* Office Action, p. 3. Applicants respectfully request the withdrawal of the rejection against claim 39 for at least the reason that claim 39 has been amended to address this rejection.

*Rejection under 35 U.S.C. § 102*

Claims 1-4, 6-8, 10-12, 14-16, 24-27, 30-32, 34, 35, 37 and 39-43 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,990,073 issued to Sandoval (“Sandoval”). *See* Office Action, p. 3. Applicants respectfully traverse this rejection.

The Office Action relies upon Sandoval’s purported computation of Sandoval’s AVE\_QUE signal to support the Office Action’s assertion that Sandoval teaches the requirement of claim 1 of “generating a first data quantity value representing a quantity of data stored in the memory at a first point in time.” *See* Office Action, pp. 3-4 (citing Sandoval 3:35-4:15). Similarly, the Office Action relies upon Sandoval’s purported comparison of its AVE\_QUE signal with either Sandoval’s minimum or maximum thresholds to support the Office Action’s assertion that Sandoval teaches the requirement of claim 1 of “comparing the first data quantity value to a first predetermined value.” *Id.* However, Applicants submit that Sandoval’s AVE\_QUE signal is not comparable to the claimed first data quantity value.

The cited sections of Sandoval state that

In a preferred embodiment, the number of data packets in the FIFO buffer 126 may be time averaged by the test circuit 120 to produce a signal (e.g., AVG\_QUE block 134). The signal AVG\_QUE may serve as an average queue depth or a time average number of data packets in the FIFO buffer 126.

Sandoval 3:38-40 (emphasis added). Therefore, it is clear that Sandoval's AVG\_QUE is a time average of the number of data packets in Sandoval's buffer. However, as would be appreciated by a person having ordinary skill in the art, the time average of a quantity is not the same as the value of that quantity at a point in time. Thus, for at least the reason that the claimed first data quantity represents "a quantity of data stored in the memory at a first point in time," Sandoval's AVG\_QUE is not comparable to the claimed first data quantity.

Thus, for at least the above reasons, Applicants respectfully request the reconsideration and withdrawal of the rejection against claim 1 and its dependent claims, and a notice of the allowance of the same. In addition, since claims 10, 24, 30, and 31 each recite similar limitations and have been rejection on a similar basis, Applicants respectfully request, for similar reasons, the reconsideration and withdrawal of the rejection against these claims and their respective dependent claims, and a notice of the allowance of the same.

In addition, Applicants submit, for similar reasons, that the cited sections of Sandoval (*see* Office Action, p. 5) fail to teach the requirement of claim 7 of "generating a second data quantity value representing a quantity of data stored in the memory device at a second point in time." Thus, Sandoval certainly fails to teach the requirement of claim 7 of "comparing the first data quantity value to the second data quantity value."

Further, Applicants have amended claim 7 to require that “the rate control signal is generated only if the first data quantity value is not equal to the second data quantity value.” The cited sections of Sandoval do not teach this requirement of claim 7 for at least the reason that, according to the Office Action, the cited sections of Sandoval teach that the rate control signal is generated if (as opposed to only if) the first data quantity value is not equal to the second data quantity value. *Id.*

Thus, for at least the above additional reasons, Applicants respectfully request the reconsideration and withdrawal of the rejection against claim 7, and a notice of the allowance of the same. In addition, since claims 15 and 27 each recite similar limitations and have been rejection on a similar basis, Applicants respectfully request, for similar reasons, the reconsideration and withdrawal of the rejection against these claims, and a notice of the allowance of the same.

**Rejection under 35 U.S.C. § 103**

Claim 38 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sandoval in view of U.S. Patent Publication No. 2006/0233102 naming Kusumoto as inventor (“Kusumoto”). *See* Office Action, p. 13. Applicants respectfully request the reconsideration and withdrawal of this rejection for at least the reason that claim 38 is dependent upon allowable base claim 1.

Newly Added Claims

Newly added claim 44 recites “modifying the first predetermined value in response at least in part to the comparing.” Applicants submit that the cited sections of Sandoval fail to teach this limitation.

As alluded to above, the Office Action equates either Sandoval’s minimum or maximum thresholds with the claimed first predetermined value. *See* Office Action, p. 4 (citing Sandoval 3:35-50). However, the cited sections of Sandoval at best teach the determining, establishing, or setting of Sandoval’s thresholds. The cited sections do not teach modifying Sandoval’s thresholds. The cited sections merely state:

The maximum threshold may be determined by a design of the FIFO buffer 126. The maximum threshold is generally set near or at the capacity of the FIFO buffer 126. The minimum threshold may be established as a percentage of the maximum threshold, a percentage of the capacity of the FIFO buffer 126, a fixed amount, or the like.

Sandoval 3:45-50 (emphasis added).

In addition, the cited sections do not teach modifying (or determining or establishing or setting) Sandoval’s thresholds in response at least in part to the claimed comparing.

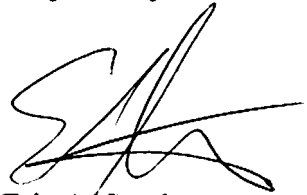
Thus, for at least these reasons, Applicants respectfully submit that newly added claim 44 is patentable over Sandoval. In addition, Applicants respectfully submit that newly added claims 45-48 are also patentable over Sandoval for similar reasons, since they recite similar limitations.

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to Deposit Account 502306.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. Stephenson', with a stylized, sweeping flourish extending from the end of the signature.

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